UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JACK CALVIN MATEER,

Plaintiff,

v.

SAN BERNARDINO COUNTY BOARD OF SUPERVISORS, et al.,

Defendants.

NO. ED CV 06-1398 PA (FMO)

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

PROCEEDINGS

On February 15, 2007, Jack Calvin Mateer ("plaintiff"), proceeding pro se, filed a Civil Rights Complaint ("Complaint"), together with a memorandum ("Mem.") and various exhibits. For the reasons discussed below, the Complaint is dismissed with leave to amend.

PLAINTIFF'S ALLEGATIONS

Plaintiff is currently confined at Coalinga State Hospital, pursuant to the Sexually Violent Predator Act ("SVPA") (Cal. Welf. & Inst. Code §§ 6600-6609.3). (See Mem. at 1). Plaintiff's Complaint concerns his treatment while confined in the San Bernardino County West Valley Jail and the Glen Helen Rehabilitation Center (collectively, "County Jail Facilities") during various periods of time between November 2003 and September 2006. (See id. at 2-3 & 7-8).

In his Complaint, plaintiff names the following defendants: (1) San Bernardino Board of Supervisors ("Board"); (2) Bob Fonzi, Sheriff of San Bernardino County West Valley Jail ("Fonzi"); (3) Gary Penrod, Sheriff of San Bernardino County West Valley Jail ("Penrod"); (4) E. Cooke, Deputy Sheriff ("Cooke"); and (5) John Doe, Deputy Sheriff. (See Complaint at 3-4). All defendants are sued in both their individual and official capacities. (See id.).

Plaintiff alleges that defendants violated his civil rights under the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments, the Ex Post Facto Clause, and the California Constitution by the manner in which the SVPA is applied at the County Jail Facilities. (See Mem. at 17 & 24-30). Plaintiff asserts that he is a civil detainee and that being housed in the County Jail Facilities amounts to punitive and illegal confinement, unlawful arrest, and false imprisonment. (See id. at 30). Plaintiff claims that defendant Cooke and an unknown deputy sheriff physically assaulted him on August 4, 2006. (See id. at 5-6). He asserts that he was subject to unsanitary conditions, contaminated food, administrative segregation, strip searches, a lack of exercise facilities and that he had to endure handcuffs, belly chains and shackles. (See id. at 20-23). Plaintiff also claims that his telephone calls were monitored, his mail was opened, and that he was denied personal contact visits, an adequate law library, and access to religious services. (See id. at 21-23).

Plaintiff claims that he has suffered severe emotional distress and severe physical injury and seeks compensatory and punitive damages, together with declaratory and injunctive relief. (See Mem. at 30-32).

STANDARD OF REVIEW

Under the provisions of the Prison Litigation Reform Act of 1995 ("PLRA"), plaintiff's Complaint is subject to sua sponte review and must be dismissed if the Complaint: (1) is frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief from a defendant immune from such relief. See 28 U.S.C. § 1915(e)(2)(B); 42 U.S.C. § 1997e(c); Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc); Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998), cert. denied, 525 U.S. 1154, 119 S.Ct. 1058 (1999); see also Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001) (per curiam) (provisions of 28 U.S.C. § 1915(e)(2) are applied to civil detainees as well as prisoners).

In civil rights cases in which the plaintiff appears pro se, the pleadings must be construed liberally, so as to afford the plaintiff the benefit of any doubt as to the potential validity of the claims asserted. See Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). However, in giving liberal interpretation to a civil rights complaint filed by a pro se litigant, a court "may not supply essential elements of the claim that were not initially pled." Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Indeed, conclusory "allegations, unsupported by facts, [will be] rejected as insufficient to state a claim[.]" Sherman v. Yakahi, 549 F.2d 1287, 1290 (9th Cir.1977); see also Barren, 152 F.3d at 1194 ("A plaintiff must allege facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights."); Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992) (per curiam) (vague and conclusory allegations of constitutional violations are insufficient to state a constitutional claim). Therefore, "at a minimum, even the pro se 'plaintiff must allege with at least some degree of particularity overt acts which defendants engaged in that support [his] claim.'" Abney v. Alameida, 334 F.Supp.2d 1221, 1226 (S.D. Cal. 2004) (quoting Jones v. Cmty. Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984)). If, despite a liberal construction, the court finds that the complaint should be dismissed for failure to state a claim,[1] the court has the discretion to dismiss the complaint with or without leave to amend. See Lopez, 203 F.3d at 1127-30.

With these standards in mind, the court now turns to the claims raised by plaintiff in his Complaint.

DISCUSSION

I. PLAINTIFF MAY NOT STATE A FEDERAL CIVIL RIGHTS CLAIM.

Section 1983 provides for the imposition of liability on any person who, acting under color of state law, deprives another of the rights, privileges or immunities secured by the Constitution or the laws of the United States. 42 U.S.C. § 1983. It does not create substantive rights, but provides remedies for deprivations of rights established elsewhere in the Constitution or federal laws. See Graham v. Connor, 490 U.S. 386, 393-94, 109 S.Ct. 1865, 1870 (1989).

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[1] Dismissal for "failure to state a claim" under the PLRA is considered under the same standard as dismissal under Fed. R. Civ. P. 12(b)(6). See Barren, 152 F.3d at 1194.

Plaintiff complains, among other things, that his detention in the County Jail Facilities does not comport with the SVPA and the California Constitution. (See Mem. at 17, 24 & 30). Plaintiff also claims that defendant Cooke and an unknown deputy sheriff assaulted him. (See id. at 5-6). If the County Jail Facilities and their employees fail to fulfill their statutory duties or violate state laws, plaintiff may have a state law cause of action. See Seling v. Young, 531 U.S. 250, 265, 121 S.Ct. 727, 736 (2001). However, "[v]iolations of state law standing alone do not afford a basis for relief in federal civil rights litigation." Munoz v. Kolender, 208 F.Supp.2d 1125, 1132 (S.D. Cal. 2002).

A state law may give rise to a liberty interest protected by the Fourteenth Amendment. See Meachum v. Fano, 427 U.S. 215, 225-27, 96 S.Ct. 2532, 2538-39 (1976). Nevertheless, the SVPA does not create a liberty interest in avoiding county jail detention. See Johnson v. Santa Clara County, 2003 WL 22114269, at *2 (N.D. Cal. 2003). Thus, there is no controlling authority to suggest that temporary detention in a county jail incident to SVP proceedings is unconstitutional. See Munoz, 208 F.Supp.2d at 1144.

In order to state a § 1983 claim, plaintiff must affirmatively link each defendant with some act or omission that demonstrates a violation of plaintiff's federal rights. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 692, 98 S.Ct. 2018, 2036 (1978); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Here, although plaintiff names the Board and certain San Bernardino County employees as defendants and provides a vague list of complaints, he fails to link any defendant to an act or omission causing a deprivation of federal rights. Without such a linkage, plaintiff fails to state a claim for relief under § 1983.

II. PLAINTIFF FAILS TO STATE A FIRST AMENDMENT CLAIM.

In Claim One, plaintiff states that defendants' policies, practices and customs punished plaintiff by not affording him freedom of the press and thereby denying him access to the outside world, in violation of the First Amendment. (See Mem. at 24). Plaintiff also asserts that defendants' policies, practices and customs punished plaintiff by placing restrictions on his freedom of association and socialization, and on his ability to assemble peacefully, access the courts, and petition the government. (See id.). Other than these conclusory statements, however,

the Complaint fails to allege facts establishing a causal link between any policy or custom and the alleged constitutional deprivation. See Lewis v. Casey, 518 U.S. 343, 351-53, 116 S.Ct. 2174, 2180-81 (1996) (plaintiff must allege actual injury); Meyers v. Pope, 2006 WL 1867656, at *11 (E.D. Cal.), R&R adopted by 2006 WL 2839843 (E.D. Cal. 2006) (vague assertions do not identify actual injury). In fact, plaintiff's facts are so minimal that the court cannot determine the exact nature of his alleged First Amendment violation. Accordingly, the claim is dismissed with leave to amend.

In amending his First Amendment claim, plaintiff should set forth specific allegations and facts to support his claims, reflecting the requirements set forth above. Plaintiff should not make vague or conclusory allegations. Instead, plaintiff should describe what happened in coherent, intelligible and legible terms, particularly as to what constitutional rights were actually chilled.

III. PLAINTIFF FAILS TO STATE A FOURTH AMENDMENT CLAIM.

In Claim Two, plaintiff provides a conclusory statement that defendants' policies, practices and customs have subjected him to unreasonable searches and physical restraints as a form of punishment, in violation of the Fourth Amendment. (See Mem. at 24-25).

"[T]he reasonableness of a particular search or seizure is determined by reference to the detention context." Hydrick v. Hunter, 466 F.3d 676, 694 (9th Cir. 2006) (internal quotation marks, alterations, and citation omitted). "As with any detained person, there are concerns that mirror those that arise in the prison context: i.e., the safety and security of guards and others in the facility, order within the facility and the efficiency of the facility's operations." Id. (internal quotation marks and citation omitted). Here, plaintiff fails to identify the policy or provide facts to describe the searches and seizures or explain why they were unreasonable within the context of his detention. Accordingly, this claim is dismissed with leave to amend.

In amending his Fourth Amendment claim, plaintiff should set forth specific allegations and facts to support his claims, reflecting the requirements set forth above. Plaintiff should not make vague or conclusory allegations. Instead, plaintiff should describe what happened in coherent, intelligible and legible terms, particularly as to what actual injuries were sustained.

IV. PLAINTIFF FAILS TO STATE EX POST FACTO AND DOUBLE JEOPARDY CLAIMS.

In his Third and Fourth claims for relief, plaintiff alleges that defendants' policies, practices and customs have violated his rights under the Ex Post Facto Clause and the right to be free from Double Jeopardy. (See Mem. at 25-26).

The Double Jeopardy Clause precludes "a second prosecution for the same offense," and prevents "the State from punishing twice, or attempting a second time to punish criminally, for the same offense." Kansas v. Hendricks, 521 U.S. 346, 369, 117 S.Ct. 2072, 2085 (1997) (internal quotation marks and citation omitted). The Ex Post Facto Clause "forbids the application of any new punitive measure to a crime already consummated," and "pertain[s] exclusively to penal statutes." Id. at 370, 117 S.Ct. at 2086 (internal quotation marks and citations omitted).

Because plaintiff's confinement under the SVPA is civil in nature, these allegations are legally frivolous as a matter of law. See Hydrick, 466 F.3d at 695 (California SVPA civil detainee's Double Jeopardy and Ex Post Facto claims are foreclosed); see also Seling, 531 U.S. at 263, 121 S.Ct. at 735 (civil detainee cannot obtain release through a challenge to State of Washington's sexually violent predator statute on Double Jeopardy or Ex Post Facto grounds). Accordingly, plaintiff should dismiss his Ex Post Facto and Double Jeopardy claims.

V. PLAINTIFF FAILS TO STATE A CRUEL AND UNUSUAL PUNISHMENT CLAIM.

In Claim Five, plaintiff alleges that defendants' policies, practices and customs have subjected him to "restrictive and degrading conditions of confinement" which amount to "[c]ruel and [u]nusual [p]unishment[,]" in violation of the Eighth and Fourteenth Amendments. (Mem. at 26-27). The Eighth Amendment, however, is not the proper vehicle to challenge the conditions of civil commitment. See Bell v. Wolfish, 441 U.S. 520, 537 n. 16, 99 S.Ct. 1861, 1873 n. 16 (1979); accord Hydrick, 466 F.3d at 695-96. Conditions of confinement claims raised by civil detainees are analyzed under the Fourteenth Amendment substantive Due Process Clause, rather than the Eighth Amendment. See Hydrick, 466 F.3d at 696. Accordingly, plaintiff should dismiss his Eighth Amendment claim.

To prevail on a Fourteenth Amendment cruel and unusual punishment claim, plaintiff must establish that the restrictions imposed by his confinement in the County Jail Facilities were

punitive rather than incident to legitimate government purposes. See Bell, 441 U.S. at 538, 99 S.Ct. at 1873-74; see also Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998) (Fourteenth Amendment cruel and unusual punishment analysis borrows from Eighth Amendment standards). To establish a violation of the Eighth Amendment, plaintiff must satisfy both the objective and subjective components of a two-part test. See Farmer v. Brennan, 511 U.S. 825, 834, 114 S.Ct. 1970, 1977 (1994); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002). First, he must demonstrate that the alleged violation was "sufficiently serious," resulting in the denial of "the minimal civilized measure of life's necessities[.]" Farmer, 511 U.S. at 834, 114 S.Ct. at 1977 (internal quotation marks and citations omitted). This objective component is not satisfied so long as the institution "furnishes sentenced prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety." Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982).

Second, plaintiff must show that defendants acted with a sufficiently culpable state of mind, i.e., with "deliberate indifference." Farmer, 511 U.S. at 840-41, 114 S.Ct. at 1980-81; Wilson v. Seiter, 501 U.S. 294, 297, 111 S.Ct. 2321, 2323 (1991); Hallett, 296 F.3d at 744. "'Deliberate indifference' is evidenced only when 'the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002) (quoting Farmer, 511 U.S. at 837, 114 S.Ct. at 1979). "This is not an easy test for Plaintiffs to satisfy." Hallett, 296 F.3d at 745. "To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoners' interests or safety." Whitley v. Albers, 475 U.S. 312, 319, 106 S.Ct. 1078, 1084 (1986). Mere negligence is insufficient to sustain a claim. See Farmer, 511 U.S. at 837, 114 S.Ct. at 1979.

Here, plaintiff's allegations are inadequate to state a Fourteenth Amendment cruel and unusual punishment claim. First, the Complaint does not allege that plaintiff was subject to prison conditions that resulted in the wanton and unnecessary infliction of pain. See Whitley, 475 U.S. at 319, 106 S.Ct. at 1084 (1986). Second, the Complaint's conclusory remarks regarding "deliberate indifference" are inadequate to demonstrate that defendants knowingly disregarded

a substantial risk of injury to plaintiff. (See, e.g., Mem. at 3-5). In short, plaintiff has not put forth any facts suggesting that defendants' conduct rose to the level of a Fourteenth Amendment cruel and unusual punishment violation. Accordingly, plaintiff should dismiss his cruel and unusual punishment claim.

VI. PLAINTIFF FAILS TO STATE A PROCEDURAL DUE PROCESS CLAIM.

In Claim Six, plaintiff alleges that defendants' policies, practices and customs have violated his procedural due process rights by restricting his movements, confiscating his property, and impinged his privileges, all without providing him proper notice and an opportunity to present evidence on his behalf before imposing such punitive measures. (See Mem. at 27).

The Due Process Clause of the Fourteenth Amendment protects detainees from being deprived of life, liberty, or property without due process of law. See Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 2974 (1974); accord Hydrick, 466 F.3d at 696. However, plaintiff has not alleged any facts that would support a claim that he was deprived of a protected interest without procedural due process nor does he identify the policy or custom that allegedly violated this right. Accordingly, plaintiff should dismiss his procedural due process claim.

VII. PLAINTIFF FAILS TO STATE A SUBSTANTIVE DUE PROCESS CLAIM.

In Claim Seven, plaintiff alleges that defendants' policies, practices and customs subjected him to improper punishments, unsanitary facilities, contaminated food and unrestrained abuses, all in violation of his Fourteenth Amendment substantive due process rights. (See Mem. at 28). Plaintiff states that the conditions of confinement at the County Jail Facilities are the same or worse than those under which penal prisoners or detainees are held. (See id.).

Civil detainees have a "right to be protected and confined in a safe institution[.]" Hydrick, 466 F.3d at 698. "To establish a violation of substantive due process . . ., a plaintiff is ordinarily required to prove that a challenged government action was clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." Patel v. Penman, 103 F.3d 868, 874 (9th Cir. 1996) (internal quotation marks, brackets, and citations omitted), cert. denied, 520 U.S. 1240, 117 S.Ct. 1845, (1997); accord County of Sacramento v. Lewis, 523 U.S. 833, 842, 118 S.Ct. 1708, 1714 (1998).

Although plaintiff complains generally that his conditions were "shocking," he provides no specific facts to support his allegations nor does he establish a causal link between a policy and the alleged deprivation. (See Mem. at 28). Accordingly, the Complaint fails to state a claim for relief and this allegation is dismissed with leave to amend.

In amending his substantive due process claim, plaintiff should set forth specific allegations and facts to support his claim, reflecting the requirements set forth above. Plaintiff should not make vague or conclusory allegations. Instead, plaintiff should describe what happened in coherent, intelligible and legible terms, particularly as to the causal connection between policies and constitutional deprivations.

VIII. PLAINTIFF FAILS TO STATE AN EQUAL PROTECTION CLAIM.

In Claim Eight, plaintiff alleges that defendants' policies, practices and customs subject him to more restrictive, punitive and degrading conditions than other civil detainees, thereby denying him equal protection of the laws. (See Mem. at 28). Equal Protection claims arise when a charge is made that similarly situated individuals are treated differently without a rational relationship to a legitimate state purpose. See San Antonio Sch. Dist. v. Rodriguez, 411 U.S. 1, 40, 93 S.Ct. 1278, 1300 (1973). In order to state a § 1983 claim based on a violation of the Equal Protection Clause, plaintiff must show that defendants acted with intentional discrimination against him or against a class of detainees that included plaintiff. See Vill. of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073, 1074-75 (2000) (Equal Protection claims may be brought by a "class of one"); Reese v. Jefferson Sch. Dist. No. 14J, 208 F.3d 736, 740 (9th Cir. 2000).

Other than his conclusory allegation, plaintiff alleges no facts to support his allegation of a denial of Equal Protection. Further, sexually violent predators ("SVPs") "have been civilly committed subsequent to criminal convictions and have been adjudged to pose a danger to the health and safety of others. Therefore, the rights of SVPs may not necessarily be coexistensive [sic] with those of all other civilly detained persons." Hydrick, 466 F.3d at 691; accord Munoz, 208 F.Supp.2d at 1141 ("To the extent [plaintiff's] Equal Protection claim relies on authority or comparison with persons confined under other of California's civil commitment schemes, such as the [Mentally Disordered Offender Program] . . . , his demonstration fails. SVPs are not 'similarly

situated' for Equal Protection purposes to persons committed under the other schemes."). Accordingly, plaintiff should dismiss his Equal Protection claim.

IX. PLAINTIFF FAILS TO STATE A SIXTH AMENDMENT CLAIM.

In Claim Nine, plaintiff states that defendants' policies, practices and customs restricted his access to the law library and the courts and interfered with his communications with legal counsel, by requiring him to use non-confidential telephones and inspecting his mail, thereby violating his Sixth Amendment rights. (See Mem. at 29). The Sixth Amendment, by its express language, protects those in criminal proceedings. See Wolff, 418 U.S. at 576, 94 S.Ct. at 2984. As plaintiff is not subject to a criminal proceeding in this action, he may not proceed on the Sixth Amendment claim alleged. Accordingly, plaintiff should dismiss his Sixth Amendment claim

X. PLAINTIFF FAILS TO STATE A PRIVACY CLAIM.

In Claim Ten, plaintiff asserts that defendants' policies, practices and customs violate his right to privacy. (See Mem. at 30). Again, other than a conclusory statement, plaintiff fails to identify specific policies or provide sufficient factual support for this allegation. Accordingly, this claim is dismissed with leave to amend.

In amending his privacy claim, plaintiff should set forth specific allegations and facts to support his claim, reflecting the requirements set forth above. Plaintiff should not make vague or conclusory allegations. Instead, plaintiff should describe what happened in coherent, intelligible and legible terms, particularly as to what actual injuries were sustained.

XI. SUPERVISORY LIABILITY.

State officials may not be held liable under the federal civil rights laws merely on the basis of their supervisory status with regard to individuals who allegedly committed the constitutional violations in question. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Rather, a supervisory official is subject to liability "only if he was personally involved in the constitutional deprivation, or if there was a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." Dennis v. Thurman, 959 F.Supp. 1253, 1261 (C.D. Cal. 1997); see also Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991), (en banc), cert. denied, 502 U.S. 1074, 112 S.Ct. 972 (1992); Hansen v. Black, 885 F.2d 642, 645-46 (9th

Cir. 1989). "A sufficient causal connection may be established by showing that the supervisor set in motion a series of acts by others, which the supervisor knew or reasonably should have known would cause others to inflict the injury." Dennis, 959 F.Supp. at 1261; see also Bergquist v. County of Cochise, 806 F.2d 1364, 1370 (9th Cir. 1986), abrogated on other grounds by City of Canton v. Harris, 489 U.S. 378, 388, 109 S.Ct. 1197, 1204 (1989). Moreover, a supervisor may be liable for constitutional violations by his or her subordinates if the supervisor knew of the violations and failed to prevent them. See Taylor, 880 F.2d at 1045; Ybarra v. Reno Thunderbird Mobile Home Vill., 723 F.2d 675, 680-81 (9th Cir. 1984).

To premise a supervisor's alleged liability on a policy promulgated by the supervisor, the plaintiff must identify a specific policy and establish a "direct causal link" between that policy and the alleged constitutional deprivation. See, e.g., City of Canton, 489 U.S. at 385, 109 S.Ct. at 1203; Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992). A "failure to train" theory can also be the basis for a supervisor's liability, but only in limited circumstances. See City of Canton, 489 U.S. at 387-90, 109 S.Ct. at 1204-05 (liability only where failure to train amounts to deliberate indifference).

Here, plaintiff alleges that the Board, Fonzi and Penrod (collectively, "Supervisory Officials") were responsible for the punitive conditions of confinement while plaintiff was housed in the County Jail Facilities and that they enabled other defendants to violate his constitutional rights. (See Mem. at 4). However, plaintiff has not set forth any facts to establish that the Supervisory Officials directly participated in or explicitly directed the alleged constitutional violations. Plaintiff sets forth no allegations that the Supervisory Officials were personally involved with the actions of any persons who allegedly deprived plaintiff of his constitutional rights. Nor does plaintiff allege a sufficient causal connection between the Supervisory Officials and such conduct. In fact, plaintiff fails to allege or name which employees, if any, the Supervisory Officials failed to supervise. Such cursory and vague allegations are insufficient to state a claim against the Supervisory Officials in their supervisory capacity.

XII. SAN BERNARDINO COUNTY BOARD OF SUPERVISORS.

A local government unit may not be held responsible for the acts of its employees under a respondeat superior theory of liability. See Monell, 436 U.S. at 691, 98 S.Ct. at 2036. Rather, to state a claim for municipal or county liability, a plaintiff must allege that he suffered a constitutional deprivation that was the product of a policy or custom of the local government unit. See City of Canton, 489 U.S. at 385, 109 S.Ct. at 1203. In this case, plaintiff merely alleges that the Board's policies violated his rights. Plaintiff identifies no specific policies nor does he state with sufficient specificity the nature of the violations. Conclusory allegations and citation to constitutional amendments are insufficient to state cognizable claims for relief. See Sherman, 549 F.2d at 1290.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. The Complaint is **dismissed with leave to amend**.

2. Plaintiff is granted leave to amend only the claims in his Complaint. Plaintiff may not add additional claims or defendants without prior leave of court. See Fed. R. Civ. P. 15(a). If plaintiff still wishes to pursue this action, he is granted until **April 2, 2007**, to file a First Amended Complaint attempting to cure the defects in the Complaint described herein.

3. The First Amended Complaint must be labeled "First Amended Complaint" and contain the case number assigned to the case, i.e., Case No. ED CV 06-1398 PA (FMO). In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make his First Amended Complaint complete. Local Rule 15-2 requires that an amended pleading be complete in and of itself without reference to any prior pleading. This is because, as a general rule, an amended pleading supercedes the original pleading. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

4. Plaintiff must use and complete the Central District's "Civil Rights Complaint" form for the First Amended Complaint. The First Amended Complaint must comply with Federal Rule of Civil Procedure 8, and with any and all instructions in the form complaint. In particular, plaintiff must follow the instruction to state all facts clearly, not conclusions, in support of his civil rights

claims. (See Form Complaint at 5). Plaintiff must also clearly describe what each defendant did to violate his civil rights. Plaintiff must also clearly number and distinguish from one another every civil rights claim he intends for the court to address. Any claim that is not clearly numbered or separated from all other claims will not be addressed as a separate claim for relief.

5. The Clerk is directed to send plaintiff a copy of the Central District's "Civil Rights Complaint" form.

6. Plaintiff is explicitly cautioned that failure to timely file a First Amended Complaint, or failure to correct the deficiencies described herein, will result in a recommendation that this action be dismissed without prejudice for failure to prosecute and/or failure to comply with a court order. See Link v. Wabash R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962); Fed. R. Civ. P. 41(b).

Dated this 2nd day of March 2007.

F. M. Olguin

Fernando M. Olguin
United States Magistrate Judge

FULL NAME

COMMITTED NAME (if different)

FULL ADDRESS INCLUDING NAME OF INSTITUTION

PRISON NUMBER (if applicable)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JACK CALVIN MATEER, PLAINTIFF,

v.

SAN BERNARDINO COUNTY BOARD OF SUPERVISORS, et al., DEFENDANT(S).

CASE NUMBER
ED CV 06-1398 PA (FMO)
To be supplied by the Clerk

FIRST AMENDED

CIVIL RIGHTS COMPLAINT PURSUANT TO *(Check one)*

☐ 42 U.S.C. § 1983
☐ Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court while a prisoner: ☐ Yes ☐ No

2. If your answer to "1." is yes, how many? _____

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

a. Parties to this previous lawsuit:
Plaintiff _____

_____

Defendants _____

_____

b. Court _____

_____

c. Docket or case number _____

d. Name of judge to whom case was assigned _____

e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) _____

f. Issues raised: _____

_____

_____

g. Approximate date of filing lawsuit: _____

h. Approximate date of disposition _____

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? ☐ Yes ☐ No

2. Have you filed a grievance concerning the facts relating to your current complaint? ☐ Yes ☐ No

   If your answer is no, explain why not _____

   _____

   _____

3. Is the grievance procedure completed? ☐ Yes ☐ No

   If your answer is no, explain why not _____

   _____

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTION

This complaint alleges that the civil rights of plaintiff _____
(print plaintiff's name)

who presently resides at _____,
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

_____
(institution/city where violation occurred)

on (date or dates) _____ (Claim I), _____ (Claim II), _____ (Claim III).

NOTE: You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant _____ resides or works at
(full name of first defendant)

_____
(full address of first defendant)

_____
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

_____

_____

2. Defendant _____ resides or works at
(full name of first defendant)

_____
(full address of first defendant)

_____
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

_____

_____

3. Defendant _____ resides or works at
(full name of first defendant)

_____
(full address of first defendant)

_____
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

_____

_____

4. Defendant _____ resides or works at
(full name of first defendant)

_____
(full address of first defendant)

_____
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

_____

_____

5. Defendant _____ resides or works at
(full name of first defendant)

_____
(full address of first defendant)

_____
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): ☐ individual ☐ official capacity.

Explain how this defendant was acting under color of law:

_____

_____

D. CLAIMS*

CLAIM I

The following civil right has been violated:

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right.

**If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same outline.*

E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

(Date) *(Signature of Plaintiff)*